IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2455 of 2005

Between:

1 P. Niranjan Rao, S/o Late Rajagopala Rao, Hindu, Male,
R/o D.No. 22-56-1, Town Hall Street, Visakhapatnam - 1.
2 P. Dharma Rao, S/o Adinarayana, Hindu, Male,
R/o D.No. 22-56-1A, Town Hall Street, Visakhapatnam - 1.
3 B. Sreenivasa Rao, S/o Gurayyasetty, Hindu, Male,
R/o D.No. 22-57-7, Town Hall Street, Visakhapatnam - 1.
4 C. Appalarao, S/o Aappalaswamy Naidu, Male,Hindu,
R/o D.No. 22-57-11, Town Hall Street, Visakhapatnam - 1.
5 J. Balakrishna, S/o Lakshmanachary, Male,Hindu,
R/o D.No. 22-57-8, Town Hall Street, Visakhapatnam - 1.
6 P. Nanaji, S/o Sathiraju, Male,Hindu,
R/o D.No. 22-5-9, Town Hall Street, Visakhapatnam - 1.
7 B.N.S. Swamy, S/o B.Ch. Swamy, Male,Hindu,
R/o D.No. 22-57-10/1, Town Hall Street, Visakhapatnam - 1.

... PETITIONERS

AND

The Visakhapatnam Municipal Corporation, Rep. by its Commissioner,
Visakhaptnam,Visakhapatnam District.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in deciding to construct the heavy sewerage treatment plant and garbage dumping and transport point in the busy residential locality by the side of town hall Ward No.3 of Visakhapatnam, Old City creating air pollution, water pollution and health hazard and thereby violating Article 21 of the Constitution of India as illegal, arbitrary, capricious, unjust and unwarranted and consequently direct the respondent not to make such constructions in the said locality or to pass any other order or orders

Counsel for the Petitioners: SMT.N.(P).ANJANA DEVI, SATYANARAYANA

Counsel for the Respondent: MR.N.RANGA REDDY

The Court at the stage of admission made the following:

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondent Corporation in deciding to construct a heavy sewerage treatment plant and garbage dumping and transport point in the busy residential locality by the side of town hall Ward No.3 of Visakhapatnam, Old City as arbitrary and illegal.

The petitioners who claim to be the residents of town hall street in old city of Visakhapatnam stated that the town hall was constructed during the British period and that they used to conduct meetings and functions in the said town hall. It is stated that the town hall area is a very busy locality and due to the surrounding heavy constructions the area became air stagnated one because of the structures like fishing harbor and the boundary walls of Visakha Container Services Private Limited etc. That apart, the Government Victoria Hospital for Women and the Municipal Elementary School are also situated by the side of the town hall. The Municipal Corporation and the Government are taking steps to improve the conditions of the town hall area by making developments. While so, in the last week of September, 2004 the respondent proposed to construct a very big sewerage treatment plant by the side of the town hall building and for that purpose the respondent corporation has dismantled the statue of the first President of India Dr. Babu Rajendra Prasad. The petitioners claim that the municipal park is the only lungs space for the residents of the locality and there is no other park in the locality. It is alleged that if the said plant is installed in that busy locality it will become a health hazard causing air pollution and becomes a breeding place for mosquitoes and houseflies. In those circumstances, they made a representation dated 29-09-2004 to the respondent corporation to stop the construction of Sewerage Treatment Plant in that locality. Another representation dated 07-02-2005 was also made to the District Collector. However, their objections were not considered and the respondents have been proceeding with the construction of Sewerage Treatment Plant. Hence, this writ petition.

On behalf of the respondent corporation a counter affidavit has been filed by the Commissioner, Municipal Corporation, Visakhapatnam, stating that the old city is thickly populated and highly sensitive area, and to protect environment and under ground water, the Visakhapatnam Municpal Corporatrion has taken up sewerage scheme under Visakhapatnam Comprehensive Sewerage Scheme – Phase-II (Sub Phase-II) Stage-I- with an estimated cost of 20.00 Crores in drainage blocks II, III, VIII & IX comprising Ward Nos: 1, 2, 3, 4part, 6part, 7, 9, 10, 11part, 12part, 13, 16part, 17, 18, 19part and 20part. It was proposed to construct a pumping station at park area by the side of town hall and to pump the sewage collected from ward Nos.1, 3, 4, 7, 8, 19 and 20 of Visakhapatnam Old City to the proposed Sewerage Treatment Plant at Old drainage pumping station in the premises of Old sewerage farm which is at a far away place from the town hall area and another pumping station in the Old Sewerage farm itself. It is also stated that while earthwork excavation was in progress for the pumping station in the existing vacant park area by the side of town hall, the existing statue of Dr. Babu Rajendra Prasad (First President of India) was removed as it was coming exactly across the alignment of proposed gravity main. The statue was removed and kept under safe custody, with a proposal to re-erect at the original place, after completion of the construction of the pumping station. At this juncture, the local people raised objections for construction of pumping station at existing vacant park area by the side of town hall. Then the location of the above mentioned pump house was shifted to another alternative site behind town hall. Again after marking out the pumping station, just before starting of earthwork excavation, the local people have raised objections on this site also. Then the location of the above mentioned pump house was shifted to an other alternative site on south side of Old Municipal Office, which is away from existing vacant park site as well as the town hall as there are no other alternative sites available in the area for the construction of the pump house. It is further explained that the wind direction will be towards sea for about 9 months in the year. Therefore the question of emission of foul smell to the petitioners houses, which are on the other side, does not arise. The Victoria Hospital is situated at about 300 meters away from the proposed site. It is stated that the old Masonic Lodge, which is not in use at present is in a dilapidated condition. Now it is proposed to maintain and develop the town hall, Old Municipal Office as an antique structure. The other allegations made by the petitioners are all denied and it is stated that as per the direction of the Supreme

Court, the Corporation is taking steps to replace conventional dust bins by a well secured iron containers and taking necessary precautions to transport the garbage collected immediately to a far away dumping place without accumulating garbage on the streets, there by avoiding inconvenience to the public. As a part of it Visakhapatnam Municpal Corporation is constructing a garbage transfer station at Old Sewerage farm where the garbage will be transferred to big vehicles from the iron containers and after loading into big vehicles, the garbage will be transported to dumping yard located at a far away place. In the meanwhile, to comply with the Supreme Court directions, the Municpal Corporation Visakhapatnam is making temporary arrangements at town hall to transfer the garbage from iron containers in the Old City to the big lorries/vehicles. It is a temporary arrangement, which will be shifted to the proposed garbage transfer station at Old sewerage farm, soon after its completion. At present only transfer of garbage from containers, directly, into big vehicles/lorries is being done and the garbage is being transported to the dumping yard located at a far away place. The Municipal Corporation Visakhapatnam is not doing/allowing any dumping and accumulation of garbage at town hall location, but it is only transferring the garbage from small containers into big vehicles/lorries. Therefore, the contention of the petitioners that the Corporation is constructing a garbage dumping and transport point is not correct. Further, the Municipal Corporation Visakhapatnam is not at all constructing any Sewerage Treatment Plant at town hall location.

I have heard the learned Counsel for both the parties and perused the material on record.

From the averments in the counter affidavit, it is clear that no other vacant sites are available and therefore there is no other option to the Visakhapatnam Municipal Corporation except to construct pump house at South side of Old Municipal Office. It is also clear that the construction of pumping station is in progress.

Having regard to the stand taken by the corporation and keeping in view that the corporation has taken all the necessary precautionary measures, so that no inconvenience would be caused to the residents of the locality, I do not see any

justifiable reason to interfere with the said decision of the corporation.

It is relevant to note that under similar circumstances this Court in **A. PRAKASH REDDY v. MUNICIPAL CORPORATION OF HDYERABAD** having considered the relevant statutory provisions observed that under sub Section (1) of Section 56 of The Hyderabad Metropolitan Water Supply and Sewerage Act, 1989, the respondent board is well within its powers to lay or construct sewerage treatment works in any street or any land vested in the Government, Corporation or any other local authority without prior intimation and that unless the petitioner is able to show that the said land belongs to him under a valid title deed, he will not be able to seek any remedy either under Section 56(2) or under Section 69 (1) of the Act. In the case on hand, admittedly the proposed site does not belong to the petitioners.

For the aforesaid reasons, the Writ Petition is devoid of merit and absolutely no case is made out warranting interference of this Court under Article 226 of the Constitution of India. Accordingly the writ petition is dismissed. No order as to costs.

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G. ROHINI, J

Dated: 24-03-2005

LSK

ASSISTANT REGISTRAR

To

1. The Visakhapatnam Municipal Corporation, Rep. by its Commissioner, Visakhaptnam,Visakhapatnam District.

2. Two C.D. copies.